

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D. C.

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|--|---|---------------------|
| In the Matter of                       | ) |                     |
|  | ) |                     |
| Interconnection and Resale Obligations | ) |                     |
| Pertaining to                          | ) | CC Docket No. 94-54 |
| Commercial Mobile Radio Services       | ) |                     |

**ORDER**

Adopted: March 21, 1996; Released: March 22, 1996

By the Commission:

1. By this Order, we terminate our inquiry into the imposition of equal access requirements on commercial mobile radio services ("CMRS") providers. In the *Equal Access NPRM*,<sup>1</sup> we tentatively concluded that cellular providers should be required to provide equal access to interexchange carriers.<sup>2</sup> Based on market conditions at that time and the record compiled in response to an earlier Petition for Rulemaking,<sup>3</sup> we tentatively concluded that the benefits of equal access would outweigh the costs, including the financial costs of network reconfiguration, administrative costs, and the loss of potentially efficient unbundling of

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<sup>1</sup> Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, Notice of Proposed Rulemaking and Notice of Inquiry, 9 FCC Rcd 5408, 5412-50 (1994) (*Equal Access NPRM*).

<sup>2</sup> "Equal access" means access that is "equal in type, quality, and price" to that offered to other interexchange carriers. *United States v. American Tel. & Tel. Co.*, 552 F.Supp. 131, 227 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983); *see also* MTS and WATS Market Structure, CC Docket No. 78-72, Phase III, Report and Order, 100 F.C.C.2d 860 (1985). This definition has historically been understood to encompass a number of requirements, including "a program of presubscription, balloting and allocation procedures, technical interconnection standards, and the '1+' form of access for presubscribed lines, with 10XXX access for non-presubscribed lines." *Equal Access NPRM*, 9 FCC Rcd at 5432.

<sup>3</sup> MCI Telecommunications Corporation, Policies and Rules Pertaining to Equal Access Obligations of Cellular Licensees, Petition for Rule Making, filed June 2, 1992.

cellular and interexchange services.<sup>4</sup> We also noted that imposition of an equal access requirement on all cellular providers would promote regulatory parity because cellular providers affiliated with the Bell Operating Companies (BOCs) were then required to provide equal access under the consent decree by which the BOCs were divested from AT&T (the "MFJ").<sup>5</sup> We further determined that the record was insufficient to support a tentative conclusion regarding whether equal access requirements on non-cellular CMRS providers would serve the public interest, and we requested comment regarding these services.<sup>6</sup> Finally, we requested comment on several issues regarding the implementation of an equal access requirement.<sup>7</sup>

2. The recent enactment of the Telecommunications Act of 1996 ("1996 Act")<sup>8</sup> changed the legal landscape under which we may consider interexchange access requirements for CMRS providers. Section 705 of the 1996 Act amended the Communications Act of 1934 ("Communications Act")<sup>9</sup> by adding a new Section 332(c)(8),<sup>10</sup> which governs access to telephone toll services by CMRS subscribers. Section 332(c)(8) states:

A person engaged in the provision of commercial mobile services, insofar as such person is so engaged, shall not be required to provide equal access to common carriers for the provision of telephone toll services. If the Commission determines that subscribers to such services are denied access to the provider of telephone toll services of the subscribers' choice, and that such denial is contrary to the public interest, convenience, and necessity, then the Commission shall prescribe regulations to afford subscribers unblocked access to the provider of telephone toll services of the subscribers' choice through the use of a carrier identification code assigned to such provider or other mechanism. The requirements for unblocking shall not apply to mobile satellite services unless the Commission finds it to be in the public interest to apply

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<sup>4</sup> *Equal Access NPRM*, 9 FCC Rcd at 5426-29.

<sup>5</sup> *Id.* at 5427; *see, e.g.*, *United States v. Western Electric Co.*, 1990-2 Trade Cas. ¶ 69,177 at 64,450-53 (D.D.C. 1990). Subsequently, AT&T's cellular operations also became subject to equal access requirements pursuant to a proposed consent decree between AT&T and the Department of Justice. *See Stipulation, United States v. AT&T Corp.*, Civ. Action No. 94-01555 (D.D.C. filed July 15, 1994) (McCaw Decree).

<sup>6</sup> *Equal Access NPRM*, 9 FCC Rcd at 5429-32.

<sup>7</sup> *Id.* at 5432-50.

<sup>8</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996).

<sup>9</sup> 47 U.S.C. §§ 151 *et seq.*

<sup>10</sup> 1996 Act, § 705, *to be codified at* 47 U.S.C. § 332(c)(8).

such requirements to such services.

In addition, Section 601 of the 1996 Act terminates the application of the MFJ and the McCaw Decree to conduct occurring on or after February 8, 1996, and thereby relieves the BOCs and AT&T of their legal obligation to provide equal access in their cellular operations.<sup>11</sup>

3. In light of the recent amendments to the Communications Act, we no longer have the authority to require CMRS providers to offer equal access. We do have the authority to require CMRS providers to afford subscribers unblocked access to the telephone toll services provider of their choice if we determine that subscribers are denied such access and that such denial is contrary to the public interest, convenience, and necessity. However, the record compiled in response to the *Equal Access NPRM* does not establish a need at this time for us to initiate an inquiry into the imposition of an unblocked access rule.<sup>12</sup> Therefore, we are terminating our examination of these issues in this docket. This Order does not affect the status of our inquiry into related issues in this or other proceedings, including CMRS resale, roaming, and interconnection.<sup>13</sup>

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<sup>11</sup> The BOCs, however, remain subject to the substantive equal access requirements of the MFJ in their local exchange wireline operations until those requirements are superseded by our rules. See 1996 Act, § 101(a), *to be codified at* 47 U.S.C. § 251(g).

<sup>12</sup> The *Equal Access NPRM* did not request comment on the desirability of an unblocked access requirement, and the record is therefore sparse. Nonetheless, several commenters indicated that they or other CMRS providers allow their customers unblocked access to interexchange carriers, either through "10XXX" codes or by dialing 800 or 950 numbers. See Cellular Telecommunications Industry Association Comments at 10; Century Cellunet, Inc. Comments at 7; Florida Cellular RSA Limited Partnership Comments at 2; GTE Service Corporation (GTE) Comments at 7-8, 30-31; Highland Cellular, Inc. Comments at 2; Point Communications Company Comments at 3; Small Market Cellular Operators Comments at 4; SNET Mobility, Inc. Comments at 9; Waterway Communication System, Inc. Comments at 4; Western Wireless Corporation Comments at 3; AirTouch Communications (AirTouch) Reply Comments at 2 n.3; GTE Reply Comments at 7; Horizon Cellular Telephone Company Reply Comments at 6; OneComm Corporation Reply Comments at 6; Personal Communications Industry Association (PCIA) Reply Comments at 4; Vanguard Cellular Systems, Inc. Reply Comments at 9. A few commenters advocated adoption of an unblocked access rule, but they supplied no evidence that subscribers are currently denied unblocked access to the interexchange carrier of their choice. See AirTouch Comments at 7-8; PCIA Comments at 8; AirTouch Reply Comments at 2; PCIA Reply Comments at 3; Letter from Larry Irving, Assistant Secretary for Communications and Information, U.S. Department of Commerce, to Reed Hundt, Chairman, FCC, at 2-3 (filed Mar. 15, 1995).

<sup>13</sup> See Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, Second Notice of Proposed Rule Making, 10 FCC Rcd 10666 (1995); Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, Notice of Proposed Rulemaking, FCC 95-505 (released Jan. 11, 1996).

4. Accordingly, IT IS ORDERED that the above-referenced rulemaking IS TERMINATED to the extent indicated herein. This action is authorized under Sections 1, 4(i), 4(j), 201, 309, 332, and 403 of the Communications Act, 47 U.S.C. §§ 151, 154(i), 154(j), 201, 309, 332, and 403.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton  
Acting Secretary